

Message Text

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ACTION EB-08

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INFO USMISSION USUN NEW YORK

C O N F I D E N T I A L SECTION 01 OF 02 GENEVA 12266

E.O. 11652: GDS

TAGS: UNCTAD, TECH

SUBJECT: UNCTAD - PREPARATIONS FOR UN CONFERENCE ON CODE
OF CONDUCT ON TRANSFER OF TECHNOLOGY

1. SUMMARY: IN RECENT CONVERSATIONS WITH PRAUN OF FRG
MISSION AND WILNER, U.S. NATIONAL IN UNCTAD SECRETARIAT,
MISSION OFFICER DISCUSSED ORGANIZATIONAL ARRANGEMENTS FOR
UN CONFERENCE ON CODE OF CONDUCT ON TRANSFER OF TECHNOLOGY
-- STRESSING THE NEED TO ENSURE THAT SUFFICIENT TIME AND
ATTENTION BE DEVOTED AT THE CONFERENCE TO APPLICABLE LAW.
BOTH PRAUN AND WILNER UNDERSTAND U.S. CONCERNS. EACH HAS
INFORMALLY SUGGESTED A POSSIBLE COMMITTEE STRUCTURE,
DESCRIBED BELOW, DESIGNED TO ENSURE THAT EACH TOPIC RE-
CEIVES APPROPRIATE LEVEL OF ATTENTION AT THE CONFERENCE.
WILNER HAS ALSO INFORMALLY SUGGESTED A POSSIBLE COMPROMISE
ON THE QUESTION OF THE LEGAL NATURE OF THE CODE. DEPART-
MENT MAY WISH TO CONSIDER SOME OF THESE IDEAS PRIOR TO
AUGUST 28-30 PREPARATORY MEETING ON ORGANIZATIONAL
ARRANGEMENTS. END SUMMARY.

2. PRAUN TOLD MISSION OFFICER THAT AT A MEETING OF GENEVA
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REPS OF EC-9 COUNTRIES, AUGUST 3, THERE WAS GENERAL SUPPORT
FOR U.S. VIEW THAT THE CONFERENCE SHOULD BE STRUCTURED
SO THAT MORE ATTENTION IS GIVEN TO APPLICABLE LAW AND
GUARANTEES, AND LESS TO RESTRICTIVE BUSINESS PRACTICES --
WHICH HAS ALREADY BEEN EXTENSIVELY TREATED IN THE EXPERT
GROUP MEETINGS. PRAUN SAID THE EC-9 WOULD FAVOR PUTTING
APPLICABLE LAW IN FIRST COMMITTEE, ALONG WITH LEGAL NATURE

OF CODE, NATIONAL REGULATION OBJECTIVES AND PRINCIPLES AND SPECIAL TREATMENT OF LDCS. THE SECOND COMMITTEE COULD THEN DEAL WITH RESTRICTIVE BUSINESS PRACTICES, GUARANTEES AND RESPONSIBILITIES, AND, POSSIBLY, DEFINITIONS AND SCOPE OF APPLICATION. PRAUN SAID THAT SMALLER EC COUNTRIES HAVE RESISTED THE IDEA OF FORMING MORE THAN TWO COMMITTEES BECAUSE OF THE LIMITED SIZE OF THEIR DELEGATIONS. NEITHER PRAUN NOR WILNER THOUGHT IT WOULD BE REALISTIC OR ADVISABLE TO TRY TO GET A DECISION ON LEGAL NATURE OF CODE IN EARLY STAGE OF CONFERENCE. WITH RESPECT TO SELECTION OF GROUP B COORDINATOR FOR CONFERENCE, PRAUN SAID THAT PER FISCHER, FRG PERM REP IN GENEVA, WOULD PROBABLY BE WILLING TO ACCEPT THE JOB IF HIS FOREIGN OFFICE IN BONN APPROVES. (COMMENT: SINCE FISCHER IS RELATIVELY NEW IN GENEVA, MISSION IS NOT WELL ACQUAINTED WITH HIM BUT WE HAVE HEARD THAT HE HAS REPUTATION FOR BEING A CALM AND TOUGH NEGOTIATOR. END COMMENT.)

3. WILNER TOLD MISSION OFFICER THAT G-77 HAD INVITED HIM TO PRESENT HIS IDEAS ON THE ORGANIZATION OF WORK FOR THE CONFERENCE AT A G-77 PREPARATORY MEETING, AUGUST 8. WILNER SAID HE HAD SUGGESTED TO THE G-77 THAT CONFERENCE HAVE TWO SUBSTANTIVE COMMITTEES, AND THAT THE FIRST COMMITTEE HAVE TWO WORKING GROUPS: FIRST WORKING GROUP WOULD HANDLE PREAMBLE, DEFINITIONS AND SCOPE OF APPLICATION, OBJECTIVES AND PRINCIPLES, AND SPECIAL TREAT-
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MENT FOR LDCS; SECOND WORKING GROUP WOULD HANDLE APPLICABLE LAW AND NATIONAL REGULATION. SECOND COMMITTEE WOULD THEN HANDLE RESTRICTIVE BUSINESS PRACTICES AND GUARANTEES AND RESPONSIBILITIES. WILNER EXPLAINED THAT SINCE WORKING GROUPS OF FIRST COMMITTEE WOULD NOT REPEAT NOT MEET CONCURRENTLY, HIS SCHEME WOULD HAVE ADVANTAGE OF PROVIDING THREE WORKING GROUPS, WHILE MEETING CONCERNS OF SMALL DELEGATIONS WHICH CANNOT COVER MORE THAN TWO SIMULTANEOUS MEETINGS. HE ALSO POINTED OUT THAT SINCE THE G-77 IS LIKELY TO INSIST THAT COMMITTEE CHAIRMEN BE AMBASSADORIAL RANK, IT MIGHT BE POSSIBLE TO PLACE TECHNICALLY COMPETENT LOWER-RANKING PEOPLE IN CHARGE OF WORKING GROUPS.

4. WILNER GAVE MISSION OFFICER ADVANCE COPY OF PROVISIONAL AGENDA FOR CONFERENCE, WHICH IS BEING SENT TO ADAMS IN EB/IFD/BP BY SEPTEL. SINCE AGENDA IS LIKELY TO BE DISCUSSED--AND POSSIBLY ADOPTED--AT AUGUST 28-30 PREPARATORY MEETING, USDEL SHOULD BE PREPARED TO COMMENT UPON IT AT THAT TIME.

5. IN ADDITION TO AGENDA, COMMITTEE STRUCTURE, AND

TOPICS TO BE HANDLED BY EACH COMMITTEE, AUGUST 28-30
MEETING WILL TAKE UP ELECTION OF OFFICERS AND ALLOCATE
POSITIONS TO REGIONAL GROUPS. GROUP B GENERALLY FAVORS
GIVING GROUP D POSITION OF CONFERENCE PRESIDENT AND G-77
THE POSITION OF RAPPORTEUR--AND HAVING GROUP B CHAIR THE
COMMITTEE WHICH WILL DECIDE LEGAL NATURE OF CODE. ALSO
WITHIN MANDATE OF AUGUST 28-30 GROUP WOULD BE ADOPTION OF
RULES OF PROCEDURE FOR THE CONFERENCE AND OTHER DECISIONS
RELATING TO ORGANIZATION OF WORK (INCLUDING POSSIBLE
ORDER IN WHICH TOPICS COULD BE DISCUSSED).

6. WILNER'S PROPOSED COMPROMISE ON LEGAL NATURE. IN

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C O N F I D E N T I A L SECTION 02 OF 02 GENEVA 12266

CONVERSATION WITH MISSION OFFICER, AUGUST 8, WILNER PUT
FORWARD HIS OWN IDEAS, ON A VERY INFORMAL BASIS, OF A
POSSIBLE COMPROMISE ON THE LEGAL NATURE OF THE CODE.
WILNER PROPOSED THAT ALL COUNTRIES ACCEPT A GENERAL STATE-
MENT OF PRINCIPLES, WHICH WOULD BE NON-BINDING AND IN
THE NATURE OF A UNGA RESOLUTION. COUNTRIES WHICH WANTED
A LEGALLY BINDING CODE COULD THEN GO ONE STEP FURTHER
BY NEGOTIATING A CONVENTION WHICH WOULD BE LEFT OPEN FOR
SIGNATURE. IN WILNER'S VIEW, A GENERAL STATEMENT OF
PRINCIPLES AGREED TO BE ALL STATES SHOULD BE REGARDED AS
A SIGNIFICANT ACHIEVEMENT. HE FEELS, HOWEVER, THAT A
LEGALLY BINDING CONVENTION WILL ALSO BE NECESSARY TO
SATISFY COUNTRIES IN THE G-77 WHICH INSIST ON IT AND TO
PROVIDE LANGUAGE WHICH ADHERENTS TO THE CONVENTION WOULD
BE ABLE TO INCORPORATE IN THEIR NATIONAL LAWS. (COMMENT:
AS AN AMERICAN EMPLOYED BY THE UNCTAD SECRETARIAT, WILNER

HAS AN ACTIVE INTEREST IN DEVELOPING A CODE OF CONDUCT
WHICH BOTH WE AND OTHER WESTERN COUNTRIES AND THE G-77
CAN ACCEPT. HIS PROPOSAL IS MEANT TO BE A GENUINE
EFFORT AT COMPROMISE, ALTHOUGH HE DOUBTS THAT EITHER THE
G-77 OR PATEL (HIS DIVISION CHIEF IN THE UNCTAD SECRE-
TARIAT) WOULD BE PREPARED AT THIS STAGE TO ACCEPT IT.
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